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**IN THE
COURT OF APPEALS OF INDIANA**

JOSE VASQUEZ,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0711-CR-608

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49F08-0508-CM-140288

May 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jose Vasquez (“Vasquez”) appeals the revocation of his probation. We affirm.

Issue

Vasquez raises one issue, which we re-state as: whether the trial court erred in revoking his probation.

Facts and Procedural History

On August 6, 2007, Vasquez was convicted of Battery and sentenced to a term of 180 days, with 179 of those suspended to probation. The Order of Probation contained a condition that Vasquez “not commit a criminal offense.” Appendix at 34. Two weeks later, the State filed a Notice of Probation Violation, alleging that he was charged on August 13 with Inhaling Toxic Vapors, a Class B misdemeanor.¹ The State then filed its Amended Notice of Probation Violation, alleging an additional charge of Inhaling Toxic Vapors committed on August 20.

On September 6, 2007, the trial court held a hearing, quoted in part below:

Court:	Okay and have you talked to probation about this?
Defense:	We have Judge. We have reached an agreement on the probation matter as well.
Court:	And that agreement is?
Defense:	That agreement would be <u>absolute strict compliance</u> , no excuse whatsoever, any violation entire backup time of 178 days in the Marion County jail.
Court:	And then he would have backup time on this case too. <u>I don't need a probation report. I don't need anything to violate him or to have him serve his suspended time.</u>
Defense:	I understand.
Court:	Are we real clear on that one?

¹ Ind. Code § 35-46-6-2.

Vasquez: Yes Your Honor.

Transcript at 15-16 (emphases added). Vasquez then pled guilty to the August 20 Inhaling Toxic Vapors charge. In doing so, he stated that he understood that his probation could be revoked on the basis of his plea. The trial court entered judgment of conviction on the August 20 charge and sentenced Vasquez to 180 days in prison with 161 of those days suspended.² The CCS Entry for that hearing notes “The court having heard evidence on violation finds: Violation found – prob. continued.” App. at 14.

Four days after the first hearing, a judge found probable cause for Vasquez to be arrested for a third alleged incident of Inhaling Toxic Vapors. Two days later, the trial court considered the State’s request to revoke Vasquez’ probation. The State noted the September 6 hearing, the “strict compliance” agreement, and that Vasquez was “back again for yet another [third] glue sniffing case.” Tr. at 26. Vasquez asserted that he could mount a strong defense and asked the trial court to simply “track . . . the new case.” Tr. at 27. An employee of the Marion County Probation Department testified that Vasquez had violated his probation “by picking up a new arrest since he was placed on strict compliance September sixth.” Tr. at 29. The trial court revoked Vasquez’ probation and ordered 120 previously-suspended days to be executed.

Vasquez now appeals.

Discussion and Decision

Vasquez argues that the trial court did not conduct a proper evidentiary hearing before

² The August 13 Inhaling Toxic Vapors charge was dismissed.

revoking his probation. The trial court may revoke a person's probation. Ind. Code § 35-38-2-3(a). It must, however, conduct a hearing. Ind. Code § 35-38-2-3(d). At that hearing, the State must prove the violation by a preponderance of the evidence, with evidence presented in open court. Ind. Code § 35-38-2-3(e).

Probation is a conditional liberty. Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). Violation of a single condition of probation is sufficient to revoke probation. Pitman v. State, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), trans. denied. Where commission of a crime is alleged, the State need not prove a conviction; only that there was probable cause that the defendant violated a law. Lightcap, 863 N.E.2d at 911.

A condition of Vasquez' probation was that he not commit a criminal offense. At the September 6 hearing, he pled guilty to a Class B misdemeanor. The trial court warned him that his plea, in itself, was cause for revoking his probation for the Battery conviction. Vasquez acknowledged that. Despite his plea, the parties agreed and the trial court allowed Vasquez to remain on probation, on the condition that his probation was subject to "absolute strict compliance, no excuse whatsoever." Tr. at 15-16. The trial court emphasized that "I don't need a probation report. I don't need anything to violate him or to have him serve his suspended time." Id. at 16. Vasquez and his attorney each indicated that he understood. At the September 12 hearing, the State offered evidence that Vasquez had been arrested after going on strict compliance. Furthermore, Vasquez acknowledged that another Marion County judge had found probable cause for his arrest.

Vasquez argues that, on September 12, the trial court did not observe the statutory requirements for revoking his probation. In his Appellant's Brief, however, he omits any reference to pleading guilty to a crime on September 6 – only to being on “strict compliance.” Appellant's Brief at 2. Vasquez is correct that probationers have certain procedural rights. See Morrissey v. Brewer, 408 U.S. 471, 489 (1972); and I.C. § 35-38-2-3. Nonetheless, “[d]efendants who plead guilty to achieve favorable outcomes in the process of bargaining give up a plethora of substantive claims and procedural rights.” Games v. State, 743 N.E.2d 1132, 1135 (Ind. 2001). “When a probationer admits to the violations, the procedural safeguards of Morrissey and the evidentiary hearing are not necessary.” Parker v. State, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997).

Here, there is no dispute that Vasquez admitted violating a condition of his probation by pleading guilty to a crime. Six days later, the trial court heard testimony that Vasquez had subsequently been arrested. Furthermore, defense counsel recognized that another judge had made a probable cause determination. Therefore, the trial court did not err in revoking Vasquez' probation. As this Court noted recently, to conclude otherwise “would allow probationers to enter into favorable agreements in lieu of full revocation but not be held to their end of the bargain.” Woods v. State, 877 N.E.2d 188, 189 (Ind. Ct. App. 2007), trans. pending.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.